LAW REFORM
COMMISSION
OF
NOVA SCOTIA

Twentieth Annual Report
April 1, 2010 to March 31, 2011

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NOVA SCOTIA

TWENTIETH ANNUAL REPORT

April 1, 2010 to March 31, 2011

The Law Reform Commission of Nova Scotia was established by the Government of Nova Scotia under the *Law Reform Commission Act*, S.N.S. 1990, c.17. It began operation in 1991.

The Commissioners for 2010-2011:

Anthony L. Chapman, Q.C., President
Darlene Jamieson, Q.C.
John L. McMullan
Kevin Coady
Ronald A. MacDonald (until December 2010)
Robert J. Currie
Brian R. Joseph (appointed April 2010)

The Commission staff in 2010-2011:

John E.S. Briggs
Executive Director and General Counsel

Angus Gibbon
Legal Research Counsel

Andrea Davidson
Administrative Assistant

William H. Charles, Q.C.
Special Counsel

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CONTENTS

A. Overview of the Law Reform Commission 4
Mandate 4
Law Reform Process 5
Effects of Law Reform Work 5
Funding 6

B. The Year in Review 2010-2011 7
Work Program and Publications 7
Completed Projects 7
Work in Progress 9
External Activities and Relations 9
Internal Administration and Organization 10
Funding & Finances 10

C. The Law Reform Commission's 20th Anniversary: Reflections 11
Farewell 12

Commissioners 14

Staff 15

Appendix A - The *Law Reform Commission Act* 16

Appendix B - Financial Report for the 2010- 2011 Fiscal Year 20

Appendix C - List of Publications (by project) 1991 - 2011 22

A. OVERVIEW OF THE LAW REFORM COMMISSION

The Law Reform Commission of Nova Scotia was created by the Government of Nova Scotia under the *Law Reform Commission Act*[1] which came into force in 1991. The Commission consists of between five and seven Commissioners (there are currently seven), an Executive Director and legal research and administrative staff. The Commission reports to the public and the elected representatives of Nova Scotia through the Attorney General of Nova Scotia. It is not a government department, but an independent advisor to government. The Commissioners, whose appointment process is set out in the *Act*, currently serve part-time and come from different sectors of the community. One Commissioner is a judge appointed by the Governor in Council (provincial Cabinet) after consultation with the Chief Justice of Nova Scotia and the chief judge of the court of which the judge is a member; two are community representatives appointed by Cabinet; two are appointed by the Council of the Nova Scotia Barristers' Society; and one person represents the faculty of the Schulich School of Law, Dalhousie University. One of the Commissioners must not be a graduate in law.

Mandate

The Commission's job is to review Nova Scotia law and to make recommendations for its improvement, modernization and reform. This may involve formulating new ideas and approaches to law, or proposing ways in which existing laws and the legal system can be made clearer or simpler to better serve the needs of the province.

The Commission may choose a topic for law reform based upon suggestions received from government, lawyers, judges, or the community. A project may also follow a government request, generally known as a reference. Since 1991, the Commission has received twelve such references from the Government. The references related respectively to the administrative justice system, the probate system, mental health provisions of the *Hospitals Act*, adoption information law,[2] grandparent-grandchild access, liability for contaminated sites arising under the *Environment Act*, garnishment of wages, the rule against perpetuities, enforcement of civil judgments, the *Human Rights Act* and "Seniors Only" housing, the *Powers of Attorney Act*, and the *Builders' Lien Act*. Eight of these have been received in the past five years, including three in March of 2010, and the Commission's work programme is now wholly occupied with government references.

The Commission does not make law in Nova Scotia; that task is performed by the elected Members of the provincial legislature. The Commission's reports and recommendations are, however, formally presented to the Attorney General and may result in new legislation or changes to existing laws.

A distinguishing characteristic of the Commission is its independence from government.

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1 S.N.S. 1990, c.17, reproduced at Appendix A.

2 Reports on the administrative justice, probate, *Hospitals Act*, grandparent-grandchild access, contaminated sites, and rule against perpetuities projects have been completed. Following completion of background research, work on adoption information law was suspended after news in 2000 of the loss of government funding. The project was subsequently referred to a committee formed by the Minister of Community Services.

Although the Commission receives a significant portion of funding from the Government of Nova Scotia, it also receives major funding support from the Law Foundation of Nova Scotia. Government has a role in Commissioner selection, but does not choose all of the Commissioners, and no Commissioner is appointed to represent the Government. The Commission undertakes government requests for law reform projects as far as is feasible, but is otherwise free to select the work it undertakes. Its analysis and recommendations are in no way determined or directed by the government. So long as done in compliance with its object and powers under the *Act*, the Commission enjoys a free hand in terms of deliberations, decisions and general management.

Law Reform Process

Each project follows a different plan and schedule, but there are some common elements. At the commencement of a project, the Commission typically forms an advisory group. The advisory group consists of community members, including government representatives, members of the judiciary, lawyers and other professionals, as well as academics and participants from groups with an interest or expertise in the topic being studied. The group meets to identify and discuss relevant issues, as well as to identify concrete proposals for reform. This first stage may also involve wider consultation among affected members of the public.

The Commission usually prepares two publications during the course of a project. The first publication, a discussion paper, sets out the Commission's preliminary proposals for reform, based in part on deliberations and advice from the advisory group. The purpose of the discussion paper is to encourage people to consider and comment on the Commission's preliminary proposals for reform, as well as any facts, issues, principles, and assumptions that have influenced those proposals. The discussion paper is circulated widely to those with a distinctive interest in the subject matter, as well as those with an interest in legislation and law reform generally.

The second publication is a final report, which is submitted to the Attorney General. It contains the final recommendations of the Commission and, in some cases, a draft law. The Commission makes its final recommendations after considering public responses to the discussion paper. The final report is intended to provide a basis for the Government to consider and adopt the recommended reforms.

The process adopted by the Commission, of seeking expert advice, consulting widely, synthesizing feedback, deliberating and report writing, is a time-consuming one. It is a process, however, which is designed to give greater weight and credibility to the final recommendations which result. The Commission does not engage in active advocacy regarding implementation of its recommendations, beyond providing its report to the Government and members of the public.

The Commission has produced 43 project papers and reports, and 19 annual reports, which are listed at Appendix C. All reports can be downloaded without cost from the Commission's website.

Effects of Law Reform Work

Recommendations in Commission Final Reports have been brought into effect in a number of ways. One way, which perhaps comes most readily to mind, is through incorporation in new or amended legislation. Since it began operations in 1991, many of the Commission's recommendations have been adopted directly in new legislation or concrete improvements to existing statutes. One of the Commission's first reports led to the creation of Nova Scotia's family maintenance enforcement program, under the *Maintenance Enforcement Act*. The Commission's

reports on probate law and the law of wills resulted in a new *Probate Act* in 2000 and significant reforms to Nova Scotia's *Wills Act* in 2006. Its report on builders' liens resulted in the enactment of a new *Builders' Lien Act* in 2004. The Commission's recommendations in relation to mental health law formed the basis for many of the provisions of the *Involuntary Psychiatric Treatment Act* of 2005. A report on personal health care decisions provided the background for the recent *Personal Directives Act* of 2008. The Commission's 2006 report on vexatious litigants resulted in amendments to the *Judicature Act* in 2009, to deal with those who unduly strain the time and resources of our courts. In 2007, Alberta legislators changed Alberta law based on the Nova Scotia Commission's report.

The Commission's work continues to form the basis for important legislative initiatives. The Department of Environment is presently developing regulations under the *Environment Act* in respect of contaminated sites, relying on the Commission's 2009 report on that topic. The Department of Justice is currently developing legislation to abolish an antiquated but nevertheless troublesome rule of law called the rule against perpetuities, following the Commission's 2010 report recommending the abolition of that rule.

The influence of the Commission's work, however, goes beyond legislation. Certain recommendations have been implemented through government policies or protocols. Commission reports have also served an important educational function and have been used as course materials in high schools and at post-secondary institutions. The Law Reform Commission was the recipient of the Canadian Bar Association's 2007 *Law Day Award* for the Commission's efforts in promoting public legal education. Further, Government, public interest groups, and other organizations have relied on Commission reports in order to develop awareness of issues and to focus discussions among interested people. Commission staff regularly speak to interested groups concerning the Commission's research and recommendations.

Commission reports have been referred to by a number of courts, including the Supreme Court of Canada, as part of their published case decisions. Judges have considered Commission reports in a number of contexts, including interim payment of damages, matrimonial property, administrative law, the jury system, powers of attorney and the legal status of the child born outside of marriage.

Nova Scotia House of Assembly members from the Liberal, New Democratic, and Progressive Conservative parties have referred with approval to Commission reports or to Commission work generally, during the course of legislative debates.

Most of the Commission's time is spent choosing, discussing, and researching law reform subjects, followed by report writing and communicating the conclusions reached. Another significant role of Commission staff is responding to inquiries about the law or about aspects of the Commission's work. The Commission does not provide legal advice, nor does it intervene in individual cases. Nonetheless, Commission staff continue to respond to general inquiries by telephone, by fax, by letter, by e-mail, or in person. In replying to inquiries, Commission staff have provided legal information, copies of Commission reports as well as other documents, and contact details for government departments and other relevant institutions.

Funding

The Commission is currently funded jointly by the Government of Nova Scotia and the Law Foundation of Nova Scotia. The Law Foundation, which funds work relating to the law, legal

education, and the administration of justice, obtains its funds from the interest on lawyers' general trust accounts. The Law Foundation's objectives specifically include law reform.[3]

B. THE YEAR IN REVIEW 2010-2011

Work Program and Publications

Completed Projects

The Rule Against Perpetuities

This project was referred to the Commission by the Attorney General in March 2010. The Commission was asked to provide its advice and recommendations on whether the rule against perpetuities should be retained, abolished or reformed. The reference followed a request from the Nova Scotia Barristers' Society to the government that the province abolish the rule.

The rule against perpetuities came into being in England in the late 17th century in order to prevent wealthy aristocratic landowners from tying up their properties in perpetuity. It is a highly complex and abstract rule, the breach of which - most typically through inadvertent errors in drafting complex wills and trusts - can result in testamentary dispositions and other property transfers being void. The circumstances giving rise to the rule, while never especially applicable to Nova Scotia, have long since changed if not disappeared. Modern taxation laws, and variation of trusts legislation, very much militate against the kind of problems which the rule was originally designed to address.

The Commission issued a discussion paper in July 2010 and a final report in December 2010. During consultations the Commission heard from practitioners and other members of the public. The overwhelming response was that the rule should simply be abolished. There was very little support for a reformed version of the rule.

In its final report, the Commission recommended abolition of the rule. Abolition will facilitate estate planning and other property transfers. As the Commission noted at the time of the release of the final report:

> *The rule against perpetuities is a common law rule which limits the duration of trusts. It also applies to other rights to property, such as an option to purchase or a condition that property must not be used for certain purposes. If full ownership of property will not be transferred to an intended beneficiary within 'a life or lives in being plus twenty-one years' then the gift or transfer is void. The property may be diverted to someone other than intended.*
>
> *The rule is notorious amongst lawyers because of its complexity, and because its effect is to disinherit legitimate beneficiaries. This occurs most often as a result of inadvertent errors in drafting complex wills and trusts. Most other jurisdictions in Canada have scaled back the rule to limit some of its harsher effects. Nova Scotia remains one of the few jurisdictions which retain the original, common law rule.*

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3 *Legal Profession Act*, S.N.S. 2004, c. 28, s. 73.

In its Report, the Law Reform Commission proposes that Nova Scotia join Manitoba, Saskatchewan, a number of US states and other jurisdictions worldwide in completely abolishing the Rule.

The Commission relies on existing legal rules to fill the gap, including the courts' power to modify trusts. A long-term trust which is causing real difficulty can be modified by the court, if the adult beneficiaries all consent. The Commission recommends that this power be expanded, to allow the court to approve a variation even over the objection of a dissenting beneficiary in appropriate cases. The Commission further proposes a new court power to modify conditional or future property rights that are not subject to the courts' existing powers in relation to trusts.

The Commission recommends that the abolition be retrospective. Once abolished, the rule would no longer apply to wills, trusts and other property transfers, even those that were drafted prior to the date of abolition. If an interest in property had already vested, however, then the abolition would not apply.

Seniors-only Housing

This project was undertaken as a result of a reference to the Commission from the Attorney General in March 2010. The principal issue is whether or not there should be an amendment to the Nova Scotia *Human Rights Act* in order to facilitate the development of housing exclusively for seniors. Certain Canadian jurisdictions have provisions in their human rights legislation which exempts seniors-only housing from a complaint of age discrimination.

In December 2010 the Commission issued a discussion paper which proposed that the *Human Rights Act* should not contain such an exemption. The Commission invited comment from interested members of the public on this preliminary proposal, and a number of related issues.

Following consideration of submissions received on the Commission's Discussion Paper during the months of February and March, the preparation of a Final Report with recommendations to government was well advanced by the end of the reporting period. The Final Report was completed and transmitted to the Attorney General in April 2011. Based on submissions and further consultations, the Commission concluded that an exemption for seniors-only housing should not be introduced into the Nova Scotia *Human Rights Act*. The Commission was concerned that a blanket exemption would apply to any seniors-only restriction. That would include assisted living facilities but also a gated community, or a condo, or apartment building, reserved for seniors. The exemption would deny housing opportunities to younger adults and families with children. In the Commission's view, while that might be justifiable in certain cases, it would not be so in every case. The *Act* currently has a number of existing defences and exemptions, and the Commission concluded those were better than a blanket exemption.

As the Commission noted upon the publication of the Final Report:

The Act presently contains exemptions for 'bona fide requirements' - that is, where a form of alleged discrimination is necessary for important purposes - and also programs to remedy disadvantage of certain groups, including seniors. Either of those could be used to justify a seniors-only rule, depending on the circumstances. As well, under the Act, the Human Rights Commission has discretion to approve an age-based restrictions in advance, thereby shielding it from a complaint. The Report concludes that the Act's

current provisions are better than a blanket exemption, because they require an assessment of the justification for each age limit, rather than permitting any age restriction, whether justified or not.

Work in Progress

Enforcement of Civil Judgments

This project had its origins in the Commission's work on the Small Claims Court. Users of the Small Claims Court, while generally satisfied with the workings of that court have consistently expressed dissatisfaction with the process for enforcing, or collecting on, judgments. The Department of Justice requested the Commission to examine the issue of enforcement in the civil justice system at large. This is an important project involving both access to, and the effectiveness of, the justice system.

This project also now includes a discrete enforcement question relating to the garnishment of wages of judgment debtors. This issue first arose during the passage of the new *Civil Procedure Rules* through the House of Assembly, and was referred to the Commission for study. The Commission decided that this question could be best dealt with in the context of the civil judgment enforcement project.

During the reporting period advisory group meetings and additional consultations were completed, and the Commission considered a draft Discussion Paper. The Commission expects to release a Discussion Paper in the summer of 2011.

The Builders' Lien Act

The Attorney General requested the Commission's recommendations with regard to several discrete questions relating to holdbacks under the *Builders' Lien Act* of 2004. That *Act* reflects the recommendations in the Commission's 2003 Report, *Builders' Liens in Nova Scotia: Reform of the Mechanics' Lien Act*. As well, the project examines whether and to what extent the Small Claims Court ought to have jurisdiction over builders' lien matters.

An Advisory Group has provided its advice and the Commission expects to publish a Discussion Paper later in 2011.

Powers of Attorney Act

The Attorney General requested the Commission's general recommendations on the improvement and modernization of the *Powers of Attorney Act*. Nova Scotia's *Act* currently lacks many of the provisions adopted in other jurisdictions to protect the donor of a power of attorney from financial abuse. The Commission has the opportunity to build on its previous work in this area; see *Final Report: Enduring Powers of Attorney in Nova Scotia* (September 1999). The Commission expects to convene an advisory group in the Fall of 2011, and to issue a discussion paper later in the year.

External Activities and Relations

The Commission and its staff consider it particularly important to maintain close liaison with the practicing Bar, the judiciary, the legal academic community, the Government, its Saint Mary's and

Dalhousie University partners, and others.

Commission staff have attended and participated in a number of external meetings and conferences during the past year, in addition to many less formal activities. In particular the Commission's Executive Director and Legal Research Counsel participated in the Annual Meetings of the Nova Scotia Barristers' Society, the Federation of Law Reform Agencies of Canada, and the Uniform Law Conference of Canada.

In October 2010 both the Executive Director and Legal Research Counsel participated in a very useful two day symposium/workshop of the Federation of Law Reform Agencies of Canada. The Commission's Legal Research Counsel also participated in a national conference hosted by the Canadian Centre for Elder Law and other organizations, held in October in Toronto.

During the past year, the Executive Director met with, amongst others, the Attorney General and Deputy Attorney General of Nova Scotia, the President and the Executive Director of the Nova Scotia Barristers' Society, the President of the Canadian Bar Association-Nova Scotia Branch, the President and Vice-President of Saint Mary's University, the Director of the British Columbia Law Institute, the Director of the Alberta Law Reform Institute, the Executive Director of the Ontario Law Commission, and the President of the Federation of Law Reform Agencies of Canada.

Internal Administration and Organization

The Commission currently has seven Commissioners. In April 2010, Dr. Brian Joseph was appointed as a Commissioner. In December 2010 Commissioner Ronald MacDonald resigned. He was replaced in June of 2011, outside the reporting period, by D. Peter Mancini, Director of Service Delivery for the Nova Scotia Legal Aid Commission.

John E.S. Briggs continued to serve as Executive Director & General Counsel until 31 March 2011 at which time he stepped down after almost ten years of service with the Commission. By the end of the reporting period the Commission was pleased to announce the appointment of Angus Gibbon as the new Executive Director, commencing 1 April 2011.

The Commission continues to benefit from the services of Professor William H. Charles, Q.C. as Special Counsel to the Commission. Professor Charles has provided valuable assistance with respect to all Commission projects during the past year.

Funding & Finances

From the establishment of the Commission in 1991 until 2001, the Commission received on average two thirds of its funding from the Government of Nova Scotia, and the remaining one third from the Law Foundation of Nova Scotia. At the time of its establishment, it had been purposely decided in discussions between the Government and the Law Foundation that the Commission would be funded equally by both. It was believed that with this funding arrangement the Commission would be, and would be seen to be, more independent than if it received all of its funding from Government. The original (1991) Commission budget was $300,000 - the equivalent of $430,975 in today's dollars - of which it was expected that the Law Foundation and the provincial government would each provide half of the required core funding.

From April 2001 until March 31, 2004 all of the Commission funding was provided by the Law

Foundation of Nova Scotia. Since that time, until the present, the Commission has been funded by both the Law Foundation and the Government of Nova Scotia in varying shares.

During the reporting period, the Commission received core funding in the amount of $142,325 from the Law Foundation, and $184,824.00 from the Department of Justice. This was a slight shift from the 2009 – 2010 fiscal year, in which the Commission received $167,728.00 from the Law Foundation and $184,824.00 from the Department of Justice.

The Commission's financial statement for the year ending 31 March 2011 is attached to this report as Appendix B.

The 2010-11 fiscal year began with an accumulated surplus of $54,764, which included $36,739 of accrued project funds. This surplus was used to offset reductions in funding from that received in previous years. Although the Commission continued to operate during the current fiscal year within its available financial resources this was only accomplished by allocating accrued funds to current expenses and engaging in substantial cost cutting measures.

C. THE LAW REFORM COMMISSION'S 20TH ANNIVERSARY: REFLECTIONS

This year marks the 20th anniversary of the Law Reform Commission since it began operation in early 1991. Since that time the Commission has completed some 43 papers and reports covering such diverse areas of law as the administration of justice, health, environment, family, human rights, torts, wills, estates and probate, commercial, contract and property law.

Law reform is an essential ingredient in preserving public confidence in the effectiveness and accessibility of the law, which in turn is so necessary to maintaining the rule of law. Law reform and its funding is first and foremost the responsibility of government. It is central to the very reason for the existence of government that it uphold and advance the rule of law. Systematic and regular attention to law reform is critical to the ongoing and vitally important challenge of maintaining the rule of law. No legislative enactment can be the final word on any subject. There will always be issues which arise that require the re-examination of legislation, and issues continually arise that have not previously been addressed. The need for law reform in Nova Scotia is as on-going and compelling as ever. The Law Reform Commission represents an intelligent and cost effective device for attending to these issues.

At its best, law reform is a collaborative effort involving the judiciary, the practicing bar, legislators, government officials, the academic community, advocacy groups and the public, all of whom have key roles to play in the process.

Generally, government does not have the time or resources to carry out law reform activities in house on a scale and with the singular focus of a law reform agency - unless it happens to be a priority on the political agenda. Nor is government able to carry out law reform with the distinctive credibility of an independent law reform agency. The independence of the Law Reform Commission is an important asset, both in developing creative and thoughtful recommendations for reform, and when engaging in consultations with external stakeholders that may be prone to distrust or cynicism with government.

There is no satisfactory substitute for systematic law reform carried out by an independent body with permanent staff and permanent funding. Nova Scotia's historical experience with the shortcomings of part time, *ad hoc,* voluntary attempts at law reform prior to 1991 underscored

the need for a permanent law reform agency. Ultimately the lessons learned from that experience resulted in the establishment of the Commission twenty years ago.

In those 20 years it has become clear just how indispensible and important is the Commission's work. It is significant, for instance, that while the Commission received only four references from the provincial government in its first fifteen years, in the last five years it has received eight. Its work programme is currently entirely occupied by requests from the Government of Nova Scotia.

The Law Reform Commission of Nova Scotia provides a unique and significant contribution to the reform of the province's laws, at very modest cost. In this regard, the Commission has been able over the past twenty years to leverage a remarkable amount of expertise from the legal profession, the judiciary, and other sectors. The Commission provides an institutional setting in which to bring together public interests and legal expertise in the service of a more effective and more accessible justice system. The value of that *pro bono* contribution far exceeds the modest annual funding required to sustain the Commission's operation. The costs - both socially and economically – of failing to maintain our legal infrastructure by reforming our laws on a systematic basis far outweigh the modest expenditure involved in funding a permanent law reform body.

As the Commission begins its 21st year of continuous operation it is completing work on civil enforcement of judgments, the *Powers of Attorney Act* and the *Builders' Lien Act*. Each of these areas of law potentially affects the social and economic well being of many Nova Scotians. In addition, in the coming year the Commission expects to undertake a project on reform of family law in Nova Scotia. This is an area of law beset with vexing challenges not only in Nova Scotia but in every jurisdiction in Canada. Ultimately improvements and modernization of that area of Nova Scotia law will provide widespread benefits to the people of the province.

In summary, although the future of the Commission is always a matter of concern, the 2010 - 2011 fiscal year has been very positive. The Commission completed its work on the rule against perpetuities with a final report and recommendations to government in December 2010. It also completed a discussion paper on seniors-only housing, followed shortly after the end of this reporting period by its final report on that subject. Work on several other projects has been well advanced during the past year. The Commission begins its 21st year of operations re-invigorated for the important work ahead.

Farewell

Finally, with this Report the Commission marks the end of the tenure of John E.S. Briggs as Executive Director and General Counsel. John came to the Commission in challenging times, faced with the loss of provincial funding and a limited three-year grant from the Law Foundation. With the clock ticking, he was able to restore the Commission to financial health with the resumption of provincial funding, and to see it through the next several productive years. In that time, the Commission completed several projects, a number of which were adopted directly into legislation, or which will be in due course. He broadened the Commission's scope of endeavor and deepened its connection to the various stakeholders in the Nova Scotia justice system by taking on challenging, collaborative projects such as the revision of the Nova Scotia *Civil Procedure Rules*. As evidenced by the Commission's increasing number of projects at the behest of the provincial government, he firmly established the Commission as an indispensable component of the legal architecture of Nova Scotia.

John did not work alone over the past ten years, and he would be the first to pass the credit for the Commission's success to others - the Commissioners whom he was honoured to counsel, the staff whom he was pleased to guide and support, and the wide variety of legal practitioners, jurists and thinkers, and other justice system stakeholders whose advice and contributions he constantly sought. But at this time the Commission is pleased to have the opportunity to shine the light where it belongs, and offer its enduring thanks.

COMMISSIONERS

Anthony L. Chapman Q.C., President
Commissioner (2004 -)
Mr. Chapman was appointed to the Commission by the Council of the Nova Scotia Barristers' Society in June 2004. He has been a member of the Nova Scotia Bar since 1980. A partner in the Halifax office of the law firm Cox & Palmer, Mr. Chapman specializes in corporate/commercial law, real property law, secured transactions, and environmental law. Mr. Chapman was appointed President in 2007.

Kevin Coady
Commissioner (2007 -)
Mr. Coady was appointed to the Commission by Order in Council in December 2007. Mr. Coady was called to the Nova Scotia Bar in 1981, and appointed to the Supreme Court of Nova Scotia in 2003. Prior to his judicial appointment, he practiced law in Nova Scotia with Coady Filliter and taught Criminal Law at Dalhousie University.

Robert J. Currie
Commissioner (2010 -)
Mr. Currie was appointed to the Commission by Order in Council in January 2010. He is an Assistant Professor at the Schulich School of Law, Dalhousie University which he joined in 2002. Prior to his academic appointment Mr. Currie had a civil litigation practice. He has been a member of the Nova Scotia Bar since 2000. Mr. Currie is a specialist in the area of international and transnational criminal law. He has authored and co-authored numerous articles on this subject as well as his own book *International and Transnational Criminal Law.*

Darlene Jamieson Q.C.
Commissioner (2002 -)
Ms. Jamieson was appointed to the Commission by the Council of the Nova Scotia Barristers' Society in June 2002. She has been a partner in the law firm Merrick Jamieson Sterns Washington & Mahody since 1998 with preferred areas of practice being civil litigation, including insurance, banking, construction and employment law. She has held numerous and varied posts with the Nova Scotia Barristers' Society.

Brian R. Joseph
Commissioner (2010 -)
Dr. Joseph was appointed to the Commission by Order in Council in April 2010. He is a graduate of St. Francis Xavier University (B.Sc. and B.A. Hons) University of Toronto (M.A.) and Harvard University (A.M. and Ph.D). Dr. Joseph has taught at Dalhousie, Saint Mary's, St. Francis Xavier, and Cape Breton universities. He has served in the Nova Scotia Attorney General's Department and the Privy Council Office, Government of Canada.

Ronald A. MacDonald
Commissioner (2009 - December 2010)
Mr. MacDonald was appointed to the Commission by Order in Council in February 2009. He is retired from the Nova Scotia Teacher's Union where his duties included working with three levels of government, public affairs and various committee work. He has also been a newspaper reporter as well as a commentator for CBC covering local, regional and national affairs. Mr. MacDonald is a graduate of Mount Allison (B.A. and BED.) and Dalhousie (MA.) Universities. He remains active in a number of community projects including the North Sydney Historical Society.

John L. McMullan
Commissioner (2006 -)
Dr. McMullan was appointed to the Commission by Order in Council in February 2006. He is a Professor of Sociology and Criminology and the former Chairperson and Criminology Graduate Studies Coordinator at Saint Mary's University. He is the author of several books and numerous articles on business crime, law enforcement, social regulation, media, law and justice, and gambling and social policy. Dr. McMullan is a multiple research award holder and has served on many university, academic, professional, and government councils and boards. He is currently interested in the role of public inquiries and truth, and the legal context of new forms of permitted gambling in Canada.

STAFF

John E.S. Briggs
Executive Director & General Counsel
Mr. Briggs, a graduate of Carleton, Queens and Oxford universities, was called to the Bar in 1974. He has been Executive Director & General Counsel of the Commission since 2001, and also acts as Outside Counsel to the Federal Minister of Justice on alleged miscarriage of justice cases. Mr. Briggs is a practicing member of the Bar in Nova Scotia and Ontario, and was President of the Federation of Law Reform Agencies of Canada from 2003 to 2008.

Angus Gibbon
Legal Research Counsel
Mr Gibbon, has been the Commission's Legal Counsel since August 2009. Mr. Gibbon earned his B.A. with Honours from Acadia University in 1996, and a law degree from the University of Toronto in 1999. In 2005 he completed his Ph.D. in political science from the University of Toronto with an emphasis on constitutional rights law in Canada. Mr. Gibbon practiced law before returning to Halifax to join the Commission in 2009. He also teaches Comparative Constitutional Law at Dalhousie University.

Andrea Davidson
Administrative Assistant
Ms. Davidson joined the Commission in May 2008. She has a strong administrative background with an emphasis on the travel industry.

William H. Charles, Q.C.
Special Counsel
Professor Charles has acted as Special Counsel to the Commission since 2001. He is a graduate of Dalhousie (where he was Dean of Law 1979-1985), Concordia, Harvard and Michigan universities. Professor Charles was the first President of the Law Reform Commission, and held that position from 1991 until 1995. He serves on a number of Boards and Councils in Nova Scotia.

APPENDIX A - THE *LAW REFORM COMMISSION ACT*

CHAPTER 17 OF THE ACTS OF 1990

An Act to Establish an Independent Law Reform Commission

Short title
1 This Act may be cited as the *Law Reform Commission Act*. 1990, c.17, s.1.

Interpretation
2 In this Act, "Commission" means the Law Reform Commission of Nova Scotia. 1990, c.17, s.2.

Law Reform Commission of Nova Scotia
3 There is hereby established a body corporate to be known as the Law Reform Commission of Nova Scotia. 1990, c.17, s.3.

Object of Commission
4 The object of the Commission is to review the law of the Province and any matter relating to law in the Province and to make recommendations for improvement, modernization and reform including, without limiting the generality of the foregoing, recommendations for

(a) development of new approaches to, and new concepts of, law that serve the changing needs of society and of individual members of society;

(b) clarification and simplification of the law;

(c) removal of provisions of the law that are outdated;

(d) improvement of the administration of justice;

(e) review of judicial and quasi-judicial procedures. 1990, c.17, s.4.

Composition of Commission
5 (l) The Commission shall be composed of not fewer than five nor more than seven commissioners who may be appointed, either on a full-time basis or a part-time basis, as follows:

(a) two members of the Nova Scotia Barristers' Society appointed by the Council of the Society;

(b) a judge of a court of the Province, appointed by the Governor in Council after consultation with the Chief Justice of Nova Scotia and the chief judge of the court of which the judge is a member;
(c) a full-time member of the Faculty of Law of Dalhousie University appointed by the Governor in Council after consultation with the Dean of the Faculty;

(d) a person who is not a graduate in law appointed by the Governor in Council;

(e) where the Governor in Council determines that the Commission is to be composed of more than five commissioners, one or two persons appointed by the Governor in Council.

Term of office of commissioner
(2) Each commissioner holds office for a term of three years, except that one of the first commissioners appointed by the Council of the Nova Scotia Barristers' Society and one of the first commissioners appointed by the Governor in Council shall be appointed for a term of two years.

Ceasing to be a commissioner
(3) A person ceases to be a commissioner where

(a) that person fails to attend three consecutive regular meetings of the Commission, except where the Commission by resolution excuses the absences; or

(b) the composition of the Commission ceases to comply with this Act as a result of the person ceasing to be a person described in clause (a), (b), (c) or (d) of subsection (1).

Casual vacancies
(4) Where a person ceases to be a commissioner for any reason other than the expiration of that person's term of office, the Governor in Council or the Council of the Nova Scotia Barristers' Society, as the case may be, shall appoint a person for the unexpired portion of the term.

Re-appointment of commissioner
(5) A commissioner whose term of office has expired may be re-appointed.

Expiry of term of office
(6) A commissioner whose term of office expires continues to hold office until a successor is appointed.

Vacancy
(7) A vacancy in the membership of the Commission does not impair the ability of the remaining members to act. 1990, c.17, s.5.

President of Commission
6 The commissioners shall appoint one of the members of the Commission to be the President of the Commission. 1990, c.17, s.6.

Remuneration and expenses
7 The President and other members of the Commission may be paid such remuneration and shall be paid such travelling and living expenses as may be determined by the Governor in Council. 1990, c.17, s.7.

Powers of Commission
8 (1) The Commission may

(a) receive and consider any proposals for the reform of the law that may be made to it by any person;

(b) initiate, carry out and direct such studies and research as are necessary to properly carry out its object;

(c) publish papers, studies or other documents prepared by or for the Commission;

(d) co-operate or enter into agreements with any organization that undertakes projects relating to the object of the Commission within or outside the Province;

(e) with the concurrence of the Attorney General and to the extent that the Commission is able to do so without, in its opinion, impairing its ability to carry out its object or duties, provide information, research material and study results and make recommendations to departments, boards and agencies of the Government of the Province concerned with the improvement, modernization or reform of laws;

(f) regulate its proceedings and provide generally for the conduct and management of its affairs;

(g) do such things and take such measures as the Commission considers advisable for the achievement of its object, including the making of by-laws.

Duties and further powers of Commission
(2) The Commission

(a) may make use of technical and other information, advice and assistance from departments, boards and agencies of the Government of the Province;

(b) shall undertake, at the request of the Attorney General, in a manner as determined by the Commission, the examination of particular laws or branches of the law and make recommendations for their improvement, modernization and reform. 1990, c.17, s.8.

Meetings of Commission
9 The Commission shall meet at least four times in each year. 1990, c.17, s.9.

Personnel
10 (1) An Executive Director and such persons as are required for the administration of this Act and the regulations shall be appointed by the Commission, in accordance with the *Civil Service Act*.

Function of Executive Director
(2) The Executive Director has the management, direction, control and administration of the day-to-day operations of the Commission.

Advisers
(3) Notwithstanding subsection (1), the Commission may engage, upon such terms and conditions as the Commission deems fit, the services of such professional persons, technical persons and experts to advise the Commission as the Commission deems necessary for the carrying out of its object. 1990, c.17, s.10.

Appropriation of money
11 (1) Money appropriated by the Legislature for the purpose of this Act shall be paid out by the Attorney General.

Law Reform Commission Fund
(2) The Commission shall maintain an account to be under the control and management of the Commission, to be known as the Law Reform Commission Fund, into which the Attorney General may pay from time to time any sum of money appropriated and into which may be paid any sum of money contributed as a grant or gift by any person, organization or body.

Use of money in Fund
(3) Except where a stipulation or condition is expressed in relation to a sum of money paid into the Law Reform Commission Fund, the money in the Fund may be used by the Commission for the purpose of this Act. 1990, c.17, s.11.

Annual report to Attorney General
12 (1) The Commission shall report from time to time to the Attorney General and shall make an annual report to the Attorney General on the activities of the Commission.

Tabling of annual report
(2) The Attorney General shall table the annual report of the Commission in the Assembly, if the Assembly is then sitting and, if the Assembly is not sitting, within fifteen days of its next sitting.

Other report
(3) Where the Commission reviews, considers or inquires into a matter, the Commission shall make a report to the Attorney General with respect to that matter at the conclusion of its deliberations.

Publication of report
(4) The Commission may publish a report made pursuant to this Section. 1990, c.17, s.12.

Repeal
13 Chapter 251 of the Revised Statutes, 1989, the *Law Reform Act*, is repealed. 1990, c.17, s.13.

Proclamation
14 This Act comes into force on and not before such days as the Governor in Council orders and declares by proclamation. 1990, c.17, s.14.

Proclaimed	-	January 22, 1991
In force	-	February 1, 1991

APPENDIX B - FINANCIAL REPORT FOR THE 2010- 2011 FISCAL YEAR

LAW REFORM COMMISSION OF NOVA SCOTIA
Income Statement as at 3/31/10

REVENUE			
Department of Justice		184,824.00	
Nova Scotia Law Foundation		142,325.00	
Interest Income		7,427.18	
TOTAL REVENUE			**334,576.18**
EXPENSES			
Wages	248,627.72		
EI Expense	2,989.95		
CPP Expense	4,069.69		
Group Insurance Expense	9,724.00		
TOTAL PERSONNEL EXPENSE		265,411.45	
Advertising	851.40		
Commissioners Fees & Expenses	7,274.16		
Electrical Expense	846.73		
Meeting Costs	452.89		
Library	2,337.10		
Accounting Fees	150.00		
Membership Dues	4,840.18		
Computer Software/Supplies/Repairs	744.49		
Internet	1,490.40		
Staff Expenses	3,572.27		
Rent	32,631.48		
Office Equipment Rental	3,166.45		
Insurance	1,139.00		
Office Supplies	1,493.14		
Photocopy/Printing	4,217.05		
Postage & Courier	1,327.45		
Telephone Expense	2,977.05		
Travel/Conference/Workshop	7,831.90		
Staff Dev. & Registration Fee	0.00		
Office Equipment Maintenance	243.00		
Bank Charges	87.80		
Miscellaneous	905.88		
HST Paid on Purchases	4,733.28		
GST Paid on Purchases	73.65		
TOTAL ADMINISTRATION & OFFICE EXPENSE		83,387.25	
TOTAL EXPENSE			**348,798.70**
NET INCOME			**(14,222.52)**

Law Reform Commission of Nova Scotia
Balance Sheet as at 03/31/2011

ASSETS

CURRENT ASSETS				
Petty Cash	25.00			
Bank Operating Account	22,979.29			
Cashable GICS	197,648.00			
T-Bill Account	0.00			
Total Cash		220,627.29		
HST Receivable		4,713.61		
Total current assets			225,365.90	
FIXED ASSETS				
Computer Equipment	19,059.16			
Accum. Computer Equipment	-19,069.16			
Net Office Equipment	0.00			
Total fixed assets			0.00	
TOTAL ASSETS				**225,365.90**

LIABILITIES

CURRENT LIABILITIES				
Vacation Payable	0.00			
UIC Payable	0.00			
CPP Payable	0.00			
Income Tax Payable	0.00			
Receiver General Payable	0.00			
Accrued Income	184,824.00			
TOTAL LIABILITIES			**184,824.00**	

EQUITY

SURPLUS				
Surplus Beginning of Year	54,764.42			
Surplus Current Year[4]	(14,222.52)			
Accumulated surplus	40,541.90			
TOTAL EQUITY			**40,541.90**	
LIABILITIES AND EQUITY				**225,365.90**

4 The 2010-11 fiscal year began with an accumulated surplus of $54,764 which included $36,739 of accrued project funds. The accumulated surplus was used to off-set reductions in external funding.

APPENDIX C - LIST OF PUBLICATIONS (BY PROJECT) 1991 - 20115

Administrative Justice System
Agencies Boards and Commissions: The Administrative Justice System (Discussion Paper, January 1996)
Reform of the Administrative Justice System in Nova Scotia (Final Report, January 1997)

Adult Guardianship/Advance Health Care Directives
Adult Guardianship in Nova Scotia (Discussion Paper, September 1993)
Living Wills in Nova Scotia (Discussion Paper, November 1994)
Adult Guardianship and Personal Health Care Decisions (Final Report, November 1995)

Contaminated Sites
Contaminated Sites in Nova Scotia (Discussion Paper, April 2009)
Contaminated Sites in Nova Scotia (Final Report, December 2009)

Custody and Access
Grandparent-Grandchild Access (Discussion Paper, January 2007)
Grandparent-Grandchild Access (Final Report, April 2007)

Domestic Violence
Violence in a Domestic Context (Discussion Paper, March 1993)
From Rhetoric to Reality, Ending Domestic Violence in Nova Scotia (Final Report, February 1995)

Enduring Powers of Attorney
Enduring Powers of Attorney in Nova Scotia (Discussion Paper, June 1998)
Enduring Powers of Attorney in Nova Scotia (Final Report, September 1999)

Enforcement of Maintenance Obligations
Enforcement of Maintenance Obligations (Discussion Paper, July 1992)
Enforcement of Maintenance Obligations (Final Report, November 1992)

Future of the Law Reform Commission
A Continuing Need for Law Reform: The Case for the Law Reform Commission of Nova Scotia (Report, December 2001)

***Human Rights Act* - Seniors-only Housing**
Seniors-only Housing (Discussion Paper, December 2010)

Interim Payment of Damages
Interim Payment of Damages (Discussion Paper, January 2000)
Interim Payment of Damages (Final Report, February 2001)

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5 Note that Commission publications are available in full on the Commission's website, www.lawreform.ns.ca.

Jury System
Reform of the Jury System in Nova Scotia (Discussion Paper, May 1993)
Reform of the Jury System in Nova Scotia (Final Report, June 1994)

Matrimonial Property
Matrimonial Property in Nova Scotia: Suggestions for a New Family Law Act (Discussion Paper, April 1996)
Reform of the Law Dealing with Matrimonial Property in Nova Scotia (Final Report, March 1997)

Mechanics' Lien Act
Builders' Liens in Nova Scotia: Reform of the Mechanics' Lien Act (Discussion Paper, January 2003)
Builders' Liens in Nova Scotia: Reform of the Mechanics' Lien Act (Final Report, June 2003)

Mental Health Provisions
Mental Health Provisions of the Hospitals Act (Discussion Paper, September 2000)
Mental Health Provisions of the Hospitals Act (Final Report, February 2002)

Mortgage Foreclosure and Sale
Mortgage Foreclosure and Sale (Discussion Paper, July 1997)
Mortgage Foreclosure and Sale (Final Report, September 1998)

Privity of Contract
Privity of Contract (Third Party Rights) (Discussion Paper, March 2004)
Privity of Contract (Third Party Rights) (Final Report, August 2004)

Probate
Probate Reform in Nova Scotia (Discussion Paper, March 1998)
Probate Reform in Nova Scotia (Final Report, March 1999)

Status of the Child Born Outside Marriage
The Legal Status of the Child Born Outside of Marriage in Nova Scotia (Discussion Paper, August 1993)
The Legal Status of the Child Born Outside of Marriage in Nova Scotia (Final Report, March 1995)

Structured Settlements
Court-ordered Structured Settlements for Personal Injury Damage Awards (Background Paper, August 2004)

The Rule Against Perpetuites
The Rule Against Perpetuities (Discussion Paper - July 2010)
The Rule Against Perpetuities (Final Report - December 2010)

Tortfeasors
Joint Tortfeasors & the Common Law "Release Bar Rule" (Final Report, July 2002)

Vexatious Litigants
Vexatious Litigants (Discussion Paper, November 2005)
Vexatious Litigants (Final Report, April 2006)

Wills Act
Reform of the Nova Scotia Wills Act (Discussion Paper, July 2003)
Reform of the Nova Scotia Wills Act (Final Report, November 2003)

Annual Reports

April 1, 1991 – March 31, 1992
April 1, 1992 – March 31, 1993
April 1, 1993 – March 31, 1994
April 1, 1994 – March 31, 1995
April 1, 1995 – March 31, 1996
April 1, 1996 – March 31, 1997
April 1, 1997 – March 31, 1998
April 1, 1998 – March 31, 1999
April 1, 1999 – March 31, 2000
April 1, 2000 – March 31, 2001
April 1, 2001 – March 31, 2002
April 1, 2002 – March 31, 2003
April 1, 2003 – March 31, 2004
April 1, 2004 – March 31, 2005
April 1, 2005 – March 31, 2006
April 1, 2006 – March 31, 2007
April 1, 2007 – March 31, 2008
April 1, 2009 – March 31, 2010